85-86

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ALEXANDER L. STEVAS,
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1984

No_____

STANLEY V. TUCKER,
Petitioner

-v-

HARTFORD NATIONAL BANK & TRUST CO
Respondent

PETITION FOR A WRIT OF CERTIORARI TO
THE CONNECTICUT SUPREME COURT

STANLEY V. TUCKER
Petitioner
Box 35
Hartford Conn 06101
203 528-6616

MAJOR QUESTION PRESENTED FOR REVIEW

The State Courts of Connecticut have for first time interpreted a federal question of state wide importance in a manner contrary to decisions of this Honorable Court in Mathews v Eldridge, 424 US 319 (1976) and in Memphis Light & Water Div v Craft, 436 US 1 (1978)

QUESTIONS PRESENTED FOR REVIEW

1. Did the Connecticut Supreme Court rule contrary to the decisions of this Court in appointment of substitute rent receiver WITHOUT DUE NOTICE including notice of State and Federal defenses ?

2. Did the Connecticut Supreme Court rule contrary to decisions of this Court in appointment of substitute rent receiver WITHOUT DUE NOTICE including notice of speedy mechanizm to terminate with damages & counsel fees a receiver incompetent or negligent?

3. Did the Connecticut Supreme Court rule contrary to decisions of this Court in appointment of substitute rent receiver without EQUAL PROTECTION by denying to Owner right to post equal bond and be rent receiver of the property he owns?

4. Did the Connecticut Supreme Court rule contrary to decisions of this Court by the appointment of substitute rent receiver WITHOUT DUE PROCESS consisting of notice and a hearing as to qualifications?

5. Did the Connecticut Supreme Court rule contrary to the decisions of this Court in permitting a re-litigation of a mortgage ALREADY MERGED INTO JUDGMENT?

6. Did the Connecticut Supreme Court rule contrary to decisions of this Court denying EQUAL PROTECTION by refusing Petitioner a hearing on Set Off of claims against Bank?

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PETITION FOR CERTIORARI TO THE CONNECTICUT SUPREME COURT

Petitioner prays that a Writ of Certiorari issue to review the judgment of the Conn. Sup Ct entered Feb 12, 1985. Timely petition for rehearing filed Feb 22, 1985 and denied 3/22/85.

CITATION TO OPINIONS BELOW

The opinion of the Conn. Sup Ct is reported 195 Conn 218 and 195 Conn _____ See Appendix B1-7

JURISDICTION

The judgment of the Conn Sup Ct denying re-hearing was entered March 22, 1985. Jurisdiction of this Court is invoked under Title 28 USC 1257 (3)

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves a denial of substantive Due Process and Due Notice and Equal Protection of the laws, the 5th and 14th Amendments to the U.S. Cons-

Constitution as set forth Appendix B herein.

This case involves Connecticut State Practice Book Sections 506-510 under color of which orders were made claimed unconstitutional and void. PB 506 - 510

Sec. 506. ——Appointment

Every application for the appointment of a receiver of rents shall be made in or ancillary to a civil action and may be made either to the court before which such action is pending or, when the court is not in actual session, to a judge in chambers. The court or judge may examine the plaintiff or his attorney and may thereupon appoint a receiver of rents. Notice of the hearing should be given when practical but such appointment may be made without notice if sufficient cause appears.
(P.B. 1963, Sec. 427.)

Sec. 507. ——Bond

No such appointment shall become effective until the receiver shall have filed a bond in such amount as shall have been fixed at the time of his appointment or until said bond shall have been approved by the judge or clerk of the court in which the action is pending; provided that no bond need be required of a bank or trust company. The condition of bonds of such receivers shall be substantially in the following form:

The condition of this obligation is such that, whereas the above named A has by (*court or judge*) been appointed, in an action brought by X against Y, to be receiver of rents of property located in the town of and described as (*describe generally, e.g., No. 93 Maple Street*):

Now, therefore, if said A shall well and truly perform his duties under such appointment, then this obligation shall be void, otherwise in full force and effect.
(P.B. 1963, Sec. 428.)

Sec. 508. ——Discharge

Any party in interest may at any time move for the discharge of the receiver.
(P.B. 1963, Sec. 429.)

Sec. 509. ——Orders

The court in which the action is pending, or the appointing judge, may make such orders for the governance of the receiver as circumstances require. The judge shall certify any order passed by him in chambers to the court in which the action may be pending.
(P.B. 1963, Sec. 430.)

Sec. 510. ——Reports

Such receivers shall file written reports quarterly and at such other times as may be required.
(P.B. 1963, Sec. 431.)

STATEMENT OF THE CASE

This action comes from 1966 when Petitioner took out a $235,000 construction mortgage to finance 32 unit apt building. Approx. $1 2,000 in mortgage payments made on time for 9 years until over objections the Bank without court order appointed a rent receiver who by neglect brought about 14 Vacancies and all payments on mortgage 7 taxes stopped.

In 1976 using losses it created with its "self help" rent receiver the BAnk started this foreclosure and secured a court appointment for present rent receiver on hearsay argument, without any grounds in motion and without any testimony.

Waste & losses mounted and continued until in March 1979 23 vacancies developed when receiver gone on vacation left order "do nothing until I return" and heating system ran out of oil and froze up. Fire Dept

"rescued" tenants using fire axes to chop in doors.

In Dec 1977 Bank prevailed and got judgment for $192,000 and sustained on appeal. During appeal a court sale took place and due to automatic stay (P.B. 3065) a second appeal took place and Conn Sup Court held sale null and Void. 181 Conn 299 . The order of remand provided only for "necessary orders not inconsistent with this opinion"

However, in lower court counsel for Bank without re-opening judgment "re-litigaged" the mortgage (now merged into valid judgment) and added $64,176 in post judgment interest and fees none of Which was provided for by mortgage nor in complaint nor in valid judgment drawn by counsel for BAnk. Petitioner sought hearing on waste and losses caused by Bank and was denied a hearing. This appeal followed.

Rent receiver moved in 1981 to terminate the receivership and restore the property to Owner's control as there were no grounds to continue receivership. In addition because his business expanded and he often flew to Michigan to go fly fishing he claimed he could no longer take care of the rents. A hearing took place and this motion denied. Subsequently the Bank moved for a new and unknown appointment and without any hearing or notice the Court made a new appointment to which the appeal amended.

During early years of receivership Petitioner was refused any reports by Bank Bank but in later years was able to get annual report so he could file losses with IRS.

During early years of receivership Petitioner was threatened with force and violence including arrest if he entered the building to find out which apts were rented. It was discovered

many rented for years by Superintendent who abscounded with rents beleived to approach $30,000. No report filed by Bank and no action taken by Court.

An intense housing shortage slowly filed the vacancies and now in escrow is about $165,000. Petitioner has urged this be in an interest bearing accounts as rates were up to 13-14% for some years but the rent receiver keeps it on deposit in a non interest account at Hartford National Bank on grounds said bank does not want to pay interest. Lost interest believed to exceed $100,000.

Rent losses have run $3,000/month for 9 years a total of $324,000 almost $100,000 more than claims of Bank. Each attempt by Peitioner to terminate or to control receiver has been ignored by state court because no rules or no standards exist to controlrent receivers.

SUBSTANTIAL REASONS FOR GRANTING WRIT

I. PETITIONER HAS BEEN DENIED DUE PROCESS OF LAW BY STATE COURT RENT RECEIVERSHIP THAT VIOLATES THE FEDERAL CONSTITUTION.

Over the centures much debate has taken place over the meaning of due process and this latest decision of Conn. Sup Ct is in SHARP CONFLICT with decisions of this Honorable Court.

Fuentes v Shevlin
407 US at 80

For more than a century the central meaning of procedural due process has been clear: "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified." *Baldwin* v. *Hale*, 1 Wall. 223, 233. See *Windsor* v. *McVeigh*, 93 U. S. 274; *Hovey* v. *Elliott*, 167 U. S. 409; *Grannis* v. *Ordean*, 234 U. S. 385. It is equally fundamental that the right to notice and an opportunity to be heard "must be granted at a meaningful time and in a meaningful manner." *Armstrong* v. *Manzo*, 380 U. S. 545, 552.

While Connecticut long enjoyed name "Constitution State" because early patriots hid the Charter from King George's men it would now be more appropirate to call it the "Hearsay State" due to Conn.

Practic Book which authorizes use of . . . hearsay on matters such as appointment of rent receivers. Hearsay without question is a major working ingredient in the Conn. State Court system daily on a massive basis without knowledge or consent of clients.

I.A. RULES 506-510 ARE OUTSIDE CONSTITUTIONAL LIMITS GIVEN CONN SUP CT

G S 51-14 "The judges of the Supreme Court shall adopt rules regulating pleading, practice and procedure in judicial proceedings in the courts. Such rules shall not abridge, enlarge or modify any substantive right nor the jurisdiction of the Courts"

These rules do just the opposite of the statutory limitation - they enlarge and abridge substantive rights and create illegal new jurisdictional power for the state courts!

This Court has repeatedly rejected rules of court adopted by State Supreme Courts that violate federal rights or abridge them.

U.S. V Sherwood
312 US 584 1941

> "Power of court to make rules of practice gives it no authority to modify or enlarge substantive rights"

Recently this court struck down as unconstitutional Arizona state court rules that prohibited attorney advertising as violation of 1st amendment.

Bates v State Bar - Arizona
433 US 350 1977

> "..justification advanced by appellee inadequate to support suppression of all advertising by attorneys"

More recently the same problem arose with Virginia state court rules violating the U.S. Constitution.

Consumers Union v American Bar Asso.
505 F Supp 822 USDC ED Virginia 1981

Consumers Union v American Bar Association
505 F Supp 822
USDC ED Virginia 1981

Consumer organization brought civil rights suit against Virginia Supreme Court and its Chief Justice seeking a declaration that their promulgation and enforcement of rule prohibiting attorney advertising was unconstitutional. A three-judge District Court, Eastern District of Virginia, 427 F.Supp. 506, rendered judgment for the consumer organization. The United States Supreme Court, 433 U.S. 917, 97 S.Ct. 2993, 53 L.Ed.2d 1104, vacated that judgment. On remand, the three-judge District Court, 470 F.Supp. 1055, held again the advertising ban unconstitutional and assessed an award of attorney fees against the Virginia Supreme Court and its Chief Justice in his official capacity and the Virginia Supreme Court appealed. The Supreme Court, 446 U.S. 719, 100 S.Ct. 1967, 64 L.Ed.2d 641, vacated and remanded. On remand, the District Court, Albert V. Bryan, Senior Circuit Judge, held that plaintiff was entitled to collect attorney fees from Supreme Court of Virginia upon prevailing in its civil rights suit to invalidate the advertising provision of the Virginia bar code; however, because Virginia Bar endeavored to have code amended to conform to constitutional standards, no fees would be assessed against the Bar.

I.B. FOROVER A CENTURY CONN. SUP CT ESCAPED REVIEW OF CONSTITUTIONALITY P.B. 506-510 DECLARING THAT ORDERS ARE "NOT APPEALABLE"

A long line of cases dates back a century or more of dismissals of appeals of rent receivership orders as "not appealable" - No opinion given - the grounds are esoteric, mysterious, devious and unknown to the public. No opinion can be found to support this massive denial of judicial review.

Hartford National Bank v Tucker
195 Conn at 223 Feb 1985

No appeal lies from the appointment of a receiver of rents in a foreclosure action.[4] *Young* v. *Polish Loan & Industrial Corporation,* 126 Conn. 714, 715, 11 A.2d 395 (1940); *Silver* v. *Kingston Realty Corporation,* 114 Conn. 349, 350n, 158 A. 889 (1932). Review of that ruling must await an appeal from the final judgment of foreclosure. *Hartford Federal Savings & Loan Assn.* v. *Tucker,* 192 Conn. 1, 5, 469 A.2d 778 (1984).

In 1972 this Petitioner filed identical briefs in Conn Sup Ct and US Sup Ct challenging on constitutional grounds pre judgment attachments, GS 52-279, made without notice or hearing.

The Conn Sup Ct dismissed the appeal claiming the issues "not understood" But this court granted certiorari, Tucker v Maher, 405 US 1052. On remand a Three Judge District Court held a hearing but before decision former Gov Meskill signed into law the new Pre-Judgement Remedy Act, GS 52-278 a-n. While the new act MADE ALL PRE JUDGMENT ORDERS APPEALABLE P. B. 506-510 BEING ILLEGAL COURT RULES escaped the attention of the legislature.

I.C. PETITIONER WAS DEPRIVED OF NOTICE UNDER RULES THAT ALLOW DEPRIVATION OF NOTICE AND HEARING.

For many decades this Honorable Court's decisions made clear that notice and hearing constitute minimum Due Process requirements.

N Georgia Finishing v Di-Chem
419 US at 606

N Georgia Finishing v Di Chem
419 US at 606

That the debtor was deprived of only the use and possession of the property, and perhaps only temporarily, did not put the seizure beyond scrutiny under the Due Process Clause. "The Fourteenth Amendment draws no bright lines around three-day, 10-day, or 50-day deprivations of property. Any significant taking of property by the State is within the purview of the Due Process Clause." *Id.*, at 86. Although the length or severity of a deprivation of use or possession would be another factor to weigh in determining the appropriate form of hearing, it was not deemed to be determinative of the right to a hearing of some sort. Because the official seizures had been carried out without notice and without opportunity for a hearing or other safeguard against mistaken repossession, they were held to be in violation of the Fourteenth Amendment.

But the Conn Supreme Ct argues in its line of cases that no appeal lies until "final judgment" because "Due Notice" is not required and the debtor must wait to appeal from final judgment, when UNFORTUNATELY THE DAMAGES ALL DONE - IT IS TOO LATE!

Young v Polish Loan
126 Conn 714,715

I.D. CONN PRACTICE BOOK 506 AUTHORIZES APPOINTMENT OF RENT RECEIVER WITH-A HEARING AND WITHOUT NOTICE

Sec. 506. ——Appointment

Every application for the appointment of a receiver of rents shall be made in or ancillary to a civil action and may be made either to the court before which such action is pending or, when the court is not in actual session, to a judge in chambers. The court or judge may examine the plaintiff or his attorney and may thereupon appoint a receiver of rents. Notice of the hearing should be given when practical but such appointment may be made without notice if sufficient cause appears.
(P.B. 1963, Sec. 427.)

The language above was the sole authority in this action for ex parte "hearings" or "communications" from Bank's counsel to Court without any notice to Petitioner to bring about the appointment of substitute rent receiver. Any representations made were in chambers or on phone out of sound and sight of this Petitioner.

The seizure of rents approximating $100,000/ year cannot be so small a matter as to dispense with need for notice and hearing.

While the rule contains qualifying language..."without notice if sufficient cause appears".. no decision of

Conn Sup Ct defines what is "sufficient cause" and no order of appointment makes finding of "sufficient cause" to justify dispensing with notice and hearing.

This language then becomes meaningless gingerbread or frosting on the cake without any meaning to Defendant deprived of his fundamentally federally protected right to Due Process of law, to adequate Notice and to Meaningful Hearing.

I. E. CONN P.B. 506 AUTHORIZES THE APPOINTMENT OF RENT RECEIVER ON HEARSAY

P. B. 506 .."the court may examine.. his attorney.."

This is precisely the proceedure used in the initial appointment of 1st rent receiver and the appointment of substitute rent receiver. No good grounds given in motion, no testimony given by bank, the court made the appointment based on hearsay allegations

of counsel just as PB 506 provides ..."the court may examine.. his attorney.."

But such crude creditor mechanisms were rejected by this Court in a line of cases holding that a "meaningful" hearing is required for any deprivation of property rights no matter how small.

Mitchell v Grant
416 US 607

"Petitioner's claim must accordingly be narrowed to one for a hearing on the issues in the possessory action - default, the existence of a lien, and possession of the debtor - before property is taken"

While during early years of rent receivership Petitioner applied to court to terminate and control rent receiver Conn PB 506-510 are barren of a word of standards or grounds and motions all disregarded and denied by state courts.

I.F. APPOINTMENT OF SUBSTITUTE RENT RECEIVER UNDER PB 506-510 VIOLATES THIS COURT's COMMAND IN MATHEWS V ELDRIDGE AND IN MEMPHIS LIGHT GAS & WATER v CRAFT

In 1976 this Honorable Court announced for first time the principle that notice was not due process notice where proeprty rights involved UNLESS THE NOTICE GAVE NOTICE TO DEBTOR OF HIS STATE & FEDERAL RIGHTS & PROVIDED A QUICK AND EASY MEANS OF ACHIEVING THESE RIGHTS.

Mathews v Eldridge
424 US 319

"Due process requires consideration of:

First - the private interest that will be affected by official action

Second-Risk of Erronious deprivation through proceedures used.

Third - Governments interest in added proceedural requirements"

These requirements were expanded, clarifed and affirmed in Craft, infra.

Memphis Light, Gas & Water Div v Craft
436 US 1 1978 at Page 2

3. Petitioners deprived respondents of an interest in property without due process of law. Pp. 12–22.

(a) Notice in a case of this kind does not comport with constitutional requirements whe t does not advise the customer of the availability of an administrative procedure for protesting a threatened termination of utility services as unjustified, and since no such notice was given respondents, despite "good faith efforts" on their part, they were not accorded due notice. Pp. 13–15.

(b) Due process requires, at a minimum, the provision of an opportunity for presenting to designated personnel empowered to rectify error a customer's complaint that he is being overcharged or charged for services not rendered, and here such a procedure was not made available to respondents. The customer's interest in not having services terminated is self-evident, the risk of erroneous deprivation of services is not insubstantial, and the utility's interests are not incompatible with affording the notice and procedure described above. *Mathews* v. *Eldridge*, 424 U. S. 319. Pp. 16–19.

After, Craft, supra, a constantly growing line of cases arose where in state after state statutes were struck down because of not providing "Due Notice" consisting of notice of state & federal defenses and a SPEEDY MEANS OF ACHIEVING THESE DEFENSES.

Probably the most recent is Rhode Island

Dionne v Bouley
53 LW 2487 1st CA

"Due process requires the state to spell out more clearly procedural rights and remedies"

Another recent state is Tennesse

Myers v City of Alcoa
53 LW 2363 6th A A

> "Craft mandated that a customer who disputed his bill is to be given opportunity to meet with responsible employee to resolve dispute prior to termination"

In 1983 in Connecticut two situations arose where statutes were struck down for failing to meet "Due Notice" requirements and for not PROVIDING NOTICE OF STATE & FEDERAL DEFENSES & A SPEEDY MECHANISM TO ACHIEVE THESE DEFENSES

First was a post judgment situation where it was held AFTER JUDGMENT before wage execution levied debtor has a "Due Notice" right to NOTICE OF STATE & FEDERAL DEFENSES & SPEEDY MECHANISM FOR RELIEF.

Wright v Tanezio
USDC Conn No 81-353
3-11-83

> "Conn GS 52-361 fails to provide prior to wage execution... a speedy adequate and meaningful opportunity to be heard at a meaningful time"

"1st - does not require notice to debtor

2nd - no procedure to promptly, simply and inexpensively challenge the validity of execution

3rd- statute fails to provide notice to debtor of existance of state & federal exemptions"

The second was the state "IRS intercept" statute that permitted the state to recover support for children by levy upon IRS refunds. It was held that "Due Notice" required NOTICE OF STATE & & FEDERAL DEFENSES & A SPEEDY MECHANISM TO ACHIEVE THESE DEFENSES"

Nelson v Regan
560 F Supp 1101
1983

8. **Constitutional Law** ⇐286
Internal Revenue ⇐4973

Federal-state intercept program, under which federal income tax refunds may be transferred to state to extent of taxpayer's past-due support obligations, violated taxpayer's due process rights, in that preintercept notice and postintercept notice failed to meet due process requirements for notice, as neither mentioned possible defenses individual might have to interception of tax refunds or the availability of regular procedures in which to challenge offset, and taxpayers did not have available an opportunity be heard at a meaningful time and in a meaningful manner. Social Security Act, § 464, as amended, 42 U.S.C.A. § 664; 26 U.S.C.A. §§ 6305, 6402; U.S.C.A. Const. Amends. 5, 14.

The Conn Sup Ct speaks of the trial Court as having "authority" which this Court knows to be a false, a phantom, a fraudulent authority since it is self created by adoption of P.B. 506-510 in violation of Conn GS 51-14 limiting power over rules to "rules of practice"

The opinion below is TOTALLY BARREN OF ANY CONSIDERATION OF "DUE NOTICE" NOR OF ANY CONSIDERATION OF STATE & FEDERAL DEFENSES NOR OF SPEEDY MECHANISM WITH WHICH THESE DEFENSES COULD BE ACHIEVED!

The Opinion grandly goes on to talk of "make any such order in the action as the exigencies of the case may require" This refers to former language of PB 509:

> "The court... may make such orders for the governance of the receiver as circumstances may require"

This language is assumed to over ride the DUE PROCESS clause of the 5th & 14th Amendments to the U.S. CONSTITUTION. Nowhere is "exigencies" or "circumstances" defined in the rules nor in any reported decision of the Conn Sup Court. This bland langauge is the authority according to 195 Conn 224, this action, for denial to this Petitioner notice and hearing when the substitute rent receiver was appointed.

The clear command of the 1st CA in Dionne, supra, controls... "due process requires the state (Connecticut) to spell out more clearly procedural rights and remedies".

However, the "Due Notice" rights were totally ignored in the state court proceedings where this Petitioner was denied the right to have former rent receiver terminated and as Owner to take over and denied notice or hearingwhen the Court in clandestine ex parte proceedings in

Chambers or on phone with help of Bank's counsel selected and appointed the substitute rent receiver subject of this Petition.

In this action SHOCKING is the disparity between the above well reasoned cases all consistent with THIS HONORABLE COURT's ruling in Craft, Supra, and this action!

Hartford National Bank v Tucker
195 Conn at 224

Not only did the trial court have the authority to continue the receivership and to "modify any such order" as necessary, but also to "make any such order in the action as the exigencies of the case may require."

I.G. PETITIONER HAS BEEN DENIED FEDERAL RIGHTS IN STATE COURT SUBSTITUTION OF RENT RECEIVERS.

The facts of this action show that the Petitioner denied fundamental federally guaranteed rights affirmed by this Court in other actions.

1. Petitioner was denied equal right to be receiver of property he owned a right this Court upheld in Mitchell v Grant 416 US 600 -23-

2. Petitioner was denied a meaningful speedy hearing on merits at which he could seek discharge of rent receiver Mitchell v Grant 416 US 606

3. Petitioner was denied a hearing at which he could seek damages and counsel fees against bank for violation of its fiduciary duties. Mitchell v Grant 416 US 606

4. Petitioner was denied "DUE NOTICE" including notice of state & federal defenses. Mathew & Craft, supra.

5. Petitioner was denied "DUE NOTICE" to include notice of speedy mechanism-to present his state & federal defenses. Mathew & Craft, supra.

II. STATE COURT JUDGMENT VOID AS WITHOUT DUE PROCESS BEING WITHOUT JURISDICTION AS MORTGAGE MERGED INTO JUDGMENT

The Supreme Court of Conn used only one case to justify the re-litigation that took place and that case does not support what happened. In Tilden v

Century 112 Conn 441-42 the time for sale passed on appeal and the lower court set new sale date.

However, that cannot justify the Conn Sup Ct approving a re-litigation of fees and interest on grounds it sustained such claims when the mortgage in effect because NOW THE MORTGAGE MERGED INTO THE JUDGMENT.

United States v Leffler
9 L Ed 642

"An original cause of action is merged forever when judgment entered upon remains in full force, unreversed"

Over the years the Leffler doctrine has been adopted by all State Courts known including early decisions in Connecticut!

Burritt v Belfy
47 Conn 323 1879

"Principal that judgment for part of demand is bar to any other suit for another part of the same demand is everywhere inflexibly maintained"

III. PETITIONER SHOULD NOT BE PENALIZED FOR CIVIL RIGHTS TORTS OF BANK

The sole basis for award of massive interest and fees is the civil rights tort committed by bank in selling the property during automatic stay on appeal. This sale held void and without due process. Hartford National Bank v Tucker 181 Conn 299. Yet the Bank sought and recovered in the state court fees and interest for the conduct of the illegal sale!

This petitioner should not be penalized with interest and fees while Bank conducted civil rights torts forcing time consumed on appeal which Bank's judgment reversed!

IV STATE COURT DENIED HEARING TO PRESENT CLAIMS AGAINST BANK FOR LOSSES & WASTE CAUSED BY ITS VIOLATION OF FIDUCIARY DUTIES.

Petitioner claims the bank had fiduciary duties in the seizure of all rents and full control of the property under a Mortgage Conditional Assigment of Rents.

The appointment of original rent receiver was without any court participation. Using losses its own illegal receiver created the Bank started this foreclosure and appointed on hearsay motion the present rent receiver. Th Bank controlled the receiver, refusing to put money into interest bearing account, refusing to raise rents to market level, opposing all motions to terminate or control the rent receiver.

Indeed so cooperative was the Conn Court. to the Bank that it can fairly be called a kangaroo court.

But in a recent case this Court affirmed fiduciary duties over the United States because Congress passed laws appointing a federal agency over Indian lands made the U.S. liable for damages for waste and negligent management. Is not Hartford National Bank Also liable for similar damages and is not Petitioner entitled to hearing?

Mitchell v U.S.
664 F 2d 665 1981

> Individual allottees of land in Indian reservation sued Government to recover damages for alleged mismanagement. On remand from the United States Supreme Court, 445 U.S. 535, 100 S.Ct. 1349, 63 L.Ed.2d 607, reversing Court of Claims, 591 F.2d 1300, the Court of Claims, Davis, J., held that: (1) timber sales statute, statute providing for regulations and sustained yield and statute concerning rights-of-way give federal officials full authority to manage Indian forest property and land and thereby create fiduciary relationship, and plaintiff Indians could recover, on proof, for
>
> breach of such fiduciary obligations and obtain compensation provided by the statutes, although recovery would be limited in reach and scope: (2) under such statutes, Indians could sue for any fall-off from income they would have received from their forests and lands if Government had properly complied with directive of statutes and regulations, and for value or decrease in value of their property which was lost or diminished in value through improper actions of Department of Interior.

There is no difference between the fiduciary duty imposed on the U.S. and the same fiduciary duty imposed on Bank by its seizure of control of the property and of the rents of Petitioner.

CONCLUSION

This Court should summarilly reverse the decision below and retain jurisdiction to ensure appropriate amendment made to Conn. Practice Book to provide "DUE NOTICE"

The judgment as to interest and fees should be vacated as WITHOUT DUE PROCESS and without jurisdiction, declared null and void.

Hearing should be directed on Petitioners claims for Banks violation of its fiduciary duties. This hearing ordered in speedy time against both Bank and Rent Receiver.

In the Alternative probable jurisdiction should be noted.

RESPECTFULLY:

STANLEY V.TUCKER
PETITIONER

AMENDMENT V—CAPITAL CRIMES; DOUBLE JEOPARDY; SELF-INCRIMINATION; DUE PROCESS; JUST COMPENSATION FOR PROPERTY

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT XIV.—CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

MOTION TO TERMINATE RECEIVERSHIP

The undersigned, being this Court's duly authorized and qualified Rent Receiver.... moves this court to terminate the Rent Receivership.....

.....

Oct 9, 1981

s/Edward . Manasse

ORDER

The Court after hearing, HEREBY ORDERS:

1. Motion to terminate receivership is denied; Attorney Michael A Merati is hereby substituted as receiver, effective upon filing of a final account .. and acceptance ... by Court.

.....

Jan 12, 1982 s/ THE COURT

MOTION FOR SET OFF

Defendant moves the court for its order granting judgment ... against Debt.

Set Off 1- Costs awarded $482...

Set Off 2- Fire Insurance Funds $8000

Set Off 3- $319,542 for waste, negligence, conversion, etc.

July 22,1981 s/ STANLEY V. TUCKER

O R D E R

Motion for default for failure to plead to set off denied.

August 10, 1981 THE COURT

AFFIDAVIT OF DEBT

There is no offset or counterclaim to plaintiff's claim. 7-23-81 s/Bank Supervisor

HARTFORD NATIONAL BANK AND TRUST COMPANY *v.* STANLEY V. TUCKER ET AL.
(10976)

PETERS, C. J., HEALEY, DANNEHY, COVELLO and F. HENNESSY, Js.

There was no merit to the named defendant's claims on this his fifth appeal to this court from the trial court's judgment ordering, inter alia, foreclosure by sale of certain property he owned in Torrington.

Argued December 5, 1984—decision released February 12, 1985

Action to foreclose a mortgage, brought to the Superior Court in the judicial district of Litchfield and tried to the court, *Sponzo, J.*; judgment of foreclosure by sale which, on appeal by the named defendant, was affirmed by this court and remanded to the trial court for, inter alia, the setting of a new date of public sale; the court, *N. O'Neill, J.*, rendered a new judgment of sale and denied the named defendant's motion that payment of a deposit not be required should he be the successful bidder; from that order of denial, and from certain other orders, the named defendant appealed to this court, which set aside that order and remanded the case for, inter alia, the setting of a new date for a public sale of the mortgaged premises; the court, *Stoughton, J.*, ordered a new judgment of sale; from that order, and from various other orders, the named defendant appealed. *No error.*

Stanley V. Tucker, pro se, the appellant (named defendant).

Bourke G. Spellacy, with whom were Frank Scinto and, on the brief, *Charles F. Corcoran III* and *Emily G. Holcomb*, for the appellee (plaintiff).

Edward W. Manasse, for the rent receiver.

DANNEHY, J. This is an appeal by the named defendant (hereinafter the defendant) from a judgment for the plaintiff in an action to foreclose a mortgage of premises at 711 East Main Street in Torrington. The defendant contends, inter alia, that the trial court erred in allowing interest, attorneys' fees, payment for insurance, and fees for an appraisal and title search to be made a part of the sum awarded to the plaintiff in the judgment which ordered a foreclosure by sale.[1]

This is the third appearance of this case in this court.[2] We do not understand on what ground the defendant undertakes to reargue that the plaintiff is not entitled to interest and reimbursement for expenses, costs, attorneys' fees and appraiser's fee. Those asserted errors were raised, discussed and appropriately interred in *Hartford National Bank & Trust Co.* v. *Tucker,* 178 Conn. 472, 423 A.2d 141 (1979), cert. denied, 445 U.S. 904, 100 S. Ct. 1079, 63 L. Ed. 2d 319 (1980) (Tucker I), and *Hartford National Bank & Trust Co.* v. *Tucker,* 181 Conn. 296, 435 A.2d 350, cert. denied, 449 U.S. 956, 101 S. Ct. 363, 66 L. Ed. 2d 221 (1980) (Tucker II). We pass that portion of the argument by, only remarking that the mandates of this court in the previous appeals of this case significantly determined the course to be pursued in the trial court on remand.

A statement of facts and the reasons for our decisions have been set forth in full detail in *Tucker I* and *Tucker II* and we will only briefly restate them here. This litigation had its provenance in January, 1976, when the plaintiff instituted an action to foreclose a mortgage given by the defendant to the plaintiff on a certain piece of land owned by the defendant in Torrington. A receiver of rents was appointed. The action went to judgment, and on December 2, 1977, the trial court ordered the sale of the premises at public auction. The defendant appealed to this court. On July 24, 1979, we concluded that no error had been committed by the trial court and, as the day set for sale had passed by reason of the appeal, remanded the case to it for the setting of a new date for a public sale of the mort-

gaged premises and other formalities not inconsistent with our decision. *Tucker I,* supra, 480. On July 27, 1979, the plaintiff filed a motion with the trial court seeking an order setting a new date for a public sale of the subject property and other incidental orders. On August 3, 1979, the defendant filed a motion to reargue his appeal before this court, which was denied on September 19, 1979. On September 21, 1979, he filed a motion with this court for a stay of proceedings so that he might prepare a petition for certiorari to be filed with the United States Supreme Court.[3] We granted the defendant a stay of proceedings for thirty days on November 1, 1979. *Tucker II,* supra, 297.

Ignoring our order that stayed the force of the judgment and suspended its execution, on September 5, 1979, the trial court granted the plaintiff's motion of July 27, 1979, and modified the judgment to provide for a public sale to be held on October 13, 1979. The defendant appealed from that judgment. We reviewed all of the claims raised by the defendant. None had merit. We found error with regard to the modification of judgment only because the defendant was deprived of the full and unhampered right of appellate review in accordance with the applicable rules of practice or statutes. The case was remanded on June 24, 1980, "for the setting of a new date for a public sale of the mortgaged premises and any other necessary orders not inconsistent with this opinion." Id., 298–99.

On May 26, 1981, the plaintiff moved for the setting of a new date for a public sale of the mortgaged premises and other necessary orders. Both parties appeared and were heard on the motion. The court heard all the evidence which was offered, the defendant being always present. After ascertaining the sum total that was due on the mortgage and after extended inquiry into the

[3] The defendant's petition for certiorari was denied on February 25, 1980. *Tucker I,* 455 U.S. 904, 100 S. Ct. 1079, 63 L. Ed. 2d 319 (1980).

value of the mortgaged premises, on July 23, 1981, the trial court decreed foreclosure by sale to be held on October 17, 1981. This appeal ensued.

In carrying out the direction of a mandate, the Superior Court is limited to the specific direction of the mandate as interpreted in the light of the opinion. *Mazzotta* v. *Bornstein,* 105 Conn. 242, 243, 135 A. 38 (1926); see *Gary Excavating Co.* v. *North Haven,* 163 Conn. 428, 430, 311 A.2d 90 (1972). Our mandate to the Superior Court both in *Tucker I* and in *Tucker II* made it plain that the judgment of that court rendered on December 2, 1979, was affirmed and that further proceedings should not be inconsistent with the views expressed in those opinions. This phraseology, while not controlling the details of the course to be pursued in the trial court, limits the proceedings insofar as they must conform to the remanding directions. We are satisfied that the judgment rendered by the trial court on remand conformed to the mandate of this court. That being so, the defendant cannot now raise questions which were or could have been answered on the former appeals.

The time fixed in the judgment for the public sale of the mortgaged premises passed pending appeal. Because of delays incident to the legal process of appeal, the judgment of the trial court became ineffective in an essential respect, and what is in effect a new judgment became necessary. *Tilden* v. *Century Realty Co.,* 112 Conn. 439, 441–42, 152 A. 707 (1930). Our prior holdings that the plaintiff was entitled to interest and reimbursement for expenses, costs, attorneys' fees and appraiser's fee were binding upon the trial court. The effect of the rescripts in *Tucker I* and in *Tucker II* was to affirm the judgment of December 2, 1977, in every particular. It was therefore proper for the trial court in the new judgment to confirm the original one in all respects except as modification was made necessary by the delays incident to the appellate pro-

cess. *Tilden* v. *Century Realty Co.*, supra, 442. The trial court, in carrying out the rescripts in our decisions, was required to set a new date for a public sale of the mortgaged premises, to ascertain the amount due the plaintiff, and to add to that amount interest and reimbursement for expenses, costs, attorneys' fees and appraiser's fee. This was the judgment rendered by the trial court on July 23, 1981. There is no error.

The complaint accompanying the mesne process in this action was filed in the Superior Court on January 30, 1976. On August 13, 1976, upon motion of the plaintiff and over vigorous objections by the defendant, a receiver of rents was appointed. After judgment for a foreclosure by sale was rendered on July 23, 1981, and the defendant appealed, the receiver of rents filed a motion to terminate the receivership. The motion to terminate the receivership was denied but the receiver was substituted, effective upon the filing of a final account. The original receiver was allowed compensation and authorized to spend money for maintenance and to pay from the balance left in his hands taxes due to the city of Torrington in an amount not to exceed $10,000. The defendant claimed the court erred in making these orders and amended his appeal accordingly.

No appeal lies from the appointment of a receiver of rents in a foreclosure action.[4] *Young* v. *Polish Loan & Industrial Corporation*, 126 Conn. 714, 715, 11 A.2d 395 (1940); *Silver* v. *Kingston Realty Corporation*, 114 Conn. 349, 350n, 158 A. 889 (1932). Review of that ruling must await an appeal from the final judgment of foreclosure. *Hartford Federal Savings & Loan Assn.* v. *Tucker*, 192 Conn. 1, 5, 469 A.2d 778 (1984). In this case, the receiver of rents was appointed by the court in 1976, prior to the entry of the judgment of fore-

[4] By contrast, the denial of an application for the appointment of a receiver is an appealable final judgment. *Brey* v. *Brey*, 1 Conn. App. 397, 398 n.4, 472 A.2d 354, cert. denied, 193 Conn. 806, 477 A.2d 659 (1984).

closure on December 2, 1977. Any objection the defendant may have had to the appointment of the rent receiver was raised when he appealed from the judgment of foreclosure of December 2, 1977. Since the defendant exercised his right to appeal from the appointment of the rent receiver, we are entitled to presume that he had a full opportunity to present his claims. "Our trial and appellate procedures are not so unreliable that we may not afford their completed operation any binding effect. . . . To the contrary, a final judgment commands respect." *United States* v. *Frady*, 456 U.S. 152, 102 S. Ct. 1584, 71 L. Ed. 2d 816, reh. denied, 456 U.S. 1001, 102 S. Ct. 2287, 73 L. Ed. 2d 1296 (1982).

In *Young* v. *Polish Loan & Industrial Corporation*, supra, we noted an exception to the general rule that the appointment of a receiver of rents is not an appealable final judgment. When an appointment is made after a judgment in the action has been rendered but while an appeal is pending from that judgment, a claim that the order was erroneous may be included in that appeal. Id., 715. The trial court's order of January 12, 1982, denying the motion to terminate the receivership effectively continued the receivership, merely changing the identity of the rent receiver. The continuation of a rent receivership with a substituted rent receiver does not constitute an appealable order within the aforementioned exception. The defendant's appeal from the trial court's December 2, 1977 order of foreclosure included a challenge to the 1976 appointment of the receiver of rents which was rejected in *Tucker I*. No further review of that appointment by this court is warranted.

Not only did the trial court have the authority to continue the receivership and to "modify any such order" as necessary, but also to "make any such order in the action as the exigencies of the case may require." Gen-

eral Statutes § 52-504; see also Practice Book § 509. When a receiver is appointed in a foreclosure action to take charge of the property, he holds it as an arm of the court and the funds in his hands are available to the court for distribution to those rightfully entitled to them; *Desiderio* v. *Iadonisi*, 115 Conn. 652, 655, 163 A. 254 (1932); including the payment of taxes and the compensation of the rent receiver. All of the parties concerned in the present controversy will still be before the court when the ultimate determination of their rights in respect to the distribution of the rents is made after the mortgaged premises are sold. *Silver* v. *Kingston Realty Corporation*, supra, 350n.

The plaintiff, a layman, tried his own case and prepared and argued his appeal in this court. On laboriously reviewing the matter, we have followed the liberal policy usual where a layman appears pro se, and have carefully considered his claims so far as they are fairly presented upon the record. *Tucker I*, supra, 476. It is obvious, however, that there is no merit to his claims and that no injustice has been done to him under the law.

This litigation has lasted for nine years. There is no longer any reason to prolong this case into the indefinite future by allowing the defendant a roving inquiry into irrelevant matter in the subsequent proceedings. Our mandate properly interpreted in the light of prior decisions of this court and the applicable statutes expressly directs the route to be followed.[5]

There is no error. The case is remanded to the Superior Court for the setting of a new date for a public sale of the mortgaged premises and other necessary orders not inconsistent with this opinion.

In this opinion the other judges concurred.